



An
Bord
Pleanála

Inspector's Report ABP-305842-19.

Development	Modify permitted Block C to provide additional floor of 5 no. apartments.
Location	Verville Retreat, Vernon Avenue, Clontarf, Dublin 3.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3768/19.
Applicant	MKN Property Group.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	MKN Property Group.
Observers	1. Dr Caoimhe Houlihan and Edwin Fusco. 2. Crea O'Dowd. 3. Verville Court Residents Committee. 4. Brendan Rodgers. 5. Laure and Kieron Sweeney. 6. Residents of Grosvenor Court. 7. Eamonn Ryan.
Date of Site Inspection	5 th February 2020.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is within the curtilage of a protected structure Verville Retreat, which is located at the western end of Vernon Avenue in Clontarf. The site is close to the central rehabilitation hospital. The character of the area is otherwise dominated by low density two-storey dwellinghouses. This includes houses in the immediate vicinity of Verville Retreat and within the original curtilage.
- 1.2. Documentation on file describes Verville Retreat as a south-facing double fronted two-storey over basement building with attic accommodation. Its fenestration and window proportions reflect the early Renaissance architecture of Queen Anne (1702 – 1714) which is an early form of Georgian architecture. The orientation of the house was related to the bay and its main / front façade is the southern elevation.
- 1.3. The western site boundary is marked by the rear boundary of the houses at Grosvenor Court. To the south is an open space with mature trees, which is part of that estate and additional houses are positioned further south. The south-eastern corner of the site is adjacent other houses in Grosvenor Court. At the north-eastern end of the site is a small apartment scheme Verville Court.
- 1.4. The permitted development provides for 68 residential units. It includes a 3-storey plus setback penthouse level Block C, which is substantially complete. There is a large void where the basement parking and landscaped open space / courtyard is to be located. The front elevation of Verville Retreat faces onto the courtyard. To date limited works have been undertaken at Verville Retreat. The permitted Block A to the north has not commenced.
- 1.5. Photographs which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. Permission is sought for the following modifications to Block C permitted under reg. ref. 2038/18 (ABP-302344-18) as follows:
 - An additional floor – resulting in a five storey building with fifth storey setback further from the permitted setback fourth floor.
 - The design of the proposed fourth floor is of L shape in layout.

- To contain 5 no. apartments.
- To include balconies at the fifth floor setback at all elevations.
- Associated site works on an area of 0.078 hectares.

3.0 **Planning Authority Decision**

3.1. **Decision**

The planning authority decided to refuse permission for the reasons summarised below:

- The addition of a new storey over the permitted four-storey block is overbearing and by reason of its heightened impact on the legibility of the previously permitted residential block would cause serious injury to the architectural character and setting of the protected structure so as to materially affect the protected structure and would therefore contravene section 11.1.5.1(b) and (d) of the development plan.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Regarding height and scale:

- In the policy context prevailing the additional floor is not unacceptable in citywide planning terms.

Regarding the impact on Retreat House:

- The Conservation Officer report is relied on and quoted.
- The development of a further floor to Block C would have a serious negative impact on the setting of the protected structure given that the new courtyard is formed in part by the balanced height relationship between the two buildings and the additional floor would dominate the setting and would therefore not be acceptable and permission should be refused.

Regarding the impact on third parties:

- Given the separation distances there would not be any material increase in overbearing.
- No daylight or sunlight analysis provided. Increased overshadowing could result.
- No increase in overlooking or noise would result.
- The proposed density would be acceptable.

Regarding traffic and parking:

- The report of the Transportation Planning Division is relied upon.

3.2.2. Other Technical Reports

Conservation Officer – recommends refusal on the basis of the following:

- The permitted proposal takes its current form from conditions of the decision of Dublin City Council supported by An Bord Pleanála, which conditions were enforced in order to protect the special architectural character and setting of the protected structure.
- The architectural character or setting of the protected structure could be eroded as a result of cumulative impacts of small interventions.
- Under the previous report the Conservation Officer’s recommendation was that the previously proposed stepped form to the west elevation of Block C would be omitted to ensure that the line of the western façade of the northern elevation of Block C would align with the junction between the bow end and the 20th-century extension of the protected structure and would provide a more appropriate edge to the formal courtyard addressing the principal façade of the protected structure.
- In the present proposal there is a return to the stepped arrangement (albeit on the eastern side) that should be considered in the same manner as a more distinctive edge to the formal courtyard would more satisfactorily address the principal façade of the protected structure and provide a frame to the new formal courtyard than the stepped arrangement currently proposed.
- The height of the new development should not exceed the eaves height of the protected structure. While the proposed North end is to be set back from the

protected structure the height of the block as a whole has now been increased from the previously permitted height which would in turn have the effect of impacting on the clarity of the courtyard setting.

- For the above reasons and in line with concerns previously identified under the previously permitted permission we recommend refusal.

Transport Planning Division – recommends further information. The report notes details of the previous decision. A maximum car parking space of 1.5 per unit is permissible. 73 no. residential units are proposed with 71 no. Car parking spaces. It is considered that one space per residential unit is preferable at this location and revised proposal should be sought.

Archaeologist – no objection subject to compliance with previous conditions.

Drainage Division – no objection.

3.3. Prescribed Bodies

No reports.

3.4. Third Party Observations

Submissions during the consideration of the application by the planning authority (27 no.) The main issues of concern are related to:

- Previous refusal.
- Height.
- Impact on protected structures.
- Overlooking.
- Overshadowing.
- Level of development.
- Traffic, parking, congested public transport.
- Impact on surface water and foul sewers.
- Zoning.

- Inadequate public open space.
- Tree removal and nature of replacements.
- Noise and light pollution
- Procedural issues.
- Health and safety, removal of asbestos and construction activities.

4.0 Planning History

Under planning reg. ref. 2038/18 (ABP – 302344 – 18) permission was granted for a residential development of 72 no. units in four blocks with a single level basement consisting of the change of use of the existing Verville Retreat building from nursing home use to residential use and the change of use of a former outbuilding to residential use. This file is attached.

Under ABP-305169-19 the Board considered a point of dispute in relation to the amount of a tree bond relevant to condition 21 of ABP-302344. It was noted in the submissions that permission had previously been granted for removal of some trees under applications decided prior to ABP-302344.

Under PL29N.245083 permission was granted for 12 no. residential units, conversion of Verville Retreat into 6 residential units and other works.

Under PL29N.226156 permission was granted for alterations to a previously approved residential development (reg. ref. 6371/05 / PL29N.217909) to increase the number of units from 43 to 45

Under PL29N.217909 permission was granted for a development described as 58 no. residential units and the refurbishment of Verville Retreat and outbuildings and other works. By condition various significant amendments to the proposed development were required.

5.0 Policy Context

5.1. Development Plan

Section 11.1.5.1(b) and (d) of the development plan are referenced in the planning authority decision. I interpret this as a reference to policy CHC2 which sets out criteria to ensure that the special interest of protected structures is protect and to conserve and enhance protected structures and their curtilage. These criteria include

(d) not cause harm to the curtilage; therefore the design, form, scale, proportions, siting and materials of new development should relate to and compliment the special character of the protected structure.

Section 16.7 refers to building heights in general and sets a limit of 16m for this area.

The site is located in an area zoned Z2, residential conservation.

Various policy support is given for increased densities including for sites close to high quality public transport.

5.2. National Guidance

Architectural Heritage Protection Guidelines refer to development within the curtilage of a protected structure in Chapter 13. Section 13.7.2 sets out questions to consider including what effect the scale, height, massing and alignment of a proposed construction would have on the protected structure and whether the protected structure would remain the focus of its setting.

Urban Development and Building Height guidelines promote a site by site consideration of height and avoidance of prescriptive measures such as setting of height limits in development plans. A sensitive approach to sites in historic environments is advocated involving assessment of proposals through urban design statements and taking into account the Architectural Protection Guidelines which remain in force. Development management guidance requires consideration of the proposal at all scales including at the scale of the site building.

National policy on planning for future growth and specific guidance relating to residential development is referenced in the Inspector's report under ABP-302344.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the appeal include:

- The development will not impact the protected structure or alter it in any way from that permitted.
- The report under the previous application which was prepared by ARC Architectural consultants confirmed the development would provide for a coherent and positive setting for the building. The report has been updated.
- The development will hardly affect the viewpoint of the protected structure from within or as viewed from the grounds. Images 1-4 refer.
- The proposal comprises a minor modification of that permitted and should be permitted including by reason of the new guidance which has been adopted since the founding application was lodged.
- The setting of Verville Retreat has already been altered and the proposed development will not significantly further alter same.
- Taking into consideration what has been permitted the proposed development will have a negligible impact. The development proposed takes into account the requirements of conditions under ABP-302344.
- As part of the appeal we enclose a Sunlight Access Impact Analysis.
- Regarding height and scale there has been a major overhaul in guidance and the planning authority agreed that the additional floor would not be an issue in that context.
- The proposal adheres to the conditions of the previous permission in relation to the requirement to set back from the protected structure and should therefore be adjudged to be permissible.
- The proposed will not be a series of interventions but is one coherent development made in light of changes to planning policy.

- If permitted there would be 73 dwellings and 71 car parking spaces which is acceptable at this location.
- Reference is made to precedent cases and images presented.

6.2. Planning Authority Response

No substantive response received.

6.3. Observations

Dr Caoimhe Houlihan and Edwin Fusco

- Noting the possibility of non-compliance with conditions relating to a tree bond it is questioned whether the founding permission is being complied. If not the consideration of the appeal would have to be terminated.
- Regarding, parking and open space these are outside the site and in terms of the legal standing of the application site this is questioned.
- The essential issue is the protected structure on the site.
- The comment that ‘the approach taken towards development within the curtilage of protected structures will have to change’. Those remarks are inappropriate and should be dismissed.
- The appeal comment that the setting of the protected structure ‘has already been radically altered’ is notable and should be interpreted as a concession that some degradation has been allowed. It highlights how essential it is to avoid any damage to the setting such as by raising the height of block C.
- The proper context remains the *Architectural Heritage Protection Guidelines*.
- Verville Retreat was set in spacious grounds and laid out in the context of the bay. Block C is already threatening to erode that character. A line must be drawn to ensure the heritage setting is not removed. Verville Retreat is a country house in architectural terms. The guidelines discourage infilling of gardens, lanes or courtyards of interest. The appeal does not adequately address the context.

- Houses to the west would be adversely affected in terms of residential amenity by overbearing, overlooking and overshadowing contrary to the zoning objective and resulting in devaluation. The increased height would impose a further obstacle to the rear of the houses further diminishing residential amenity. There has been no presentation of images from these houses only from the courtyard.

Crea O'Dowd

A revised BRE assessment is required as that presented with the original application failed to take certain account of certain zones. In particular west facing elevations have a reasonable expectation and currently enjoy afternoon evening and evening sunlight in winter and summer. The reduction in daylight for these west facing dwellings caused by the permitted development already comes close to the good practice guidelines limit set out by the BRE.

The BRE guidelines state that if a building subtends more than 25 degrees from the centre of a ground floor window (usually taken to be 2m above ground) then daylight conditions are likely to be adversely affected. That is the case as shown on the attached drawing.

Verville Court Residents Committee

- The additional floor would further damage the special character of the protected structure. The permitted 4 storeys is too high already.
- The development would further impact residential amenities by overshadowing/overlooking and would be visually overbearing and intrusive.
- The increased height and the location of the balcony and windows in apartment 1 would result in grave overlooking. Privacy of the open space and habitable rooms of dwellings would be greatly compromised.

Brendan Rodgers

- In the original application the developer was at pains to point out the sensitivity of the design and the respect for the protected structure and its setting. He effectively acknowledged the uniqueness of the site and the limit to development. He stated that the development will be a maximum of four storeys.

Laure and Kieron Sweeney

- The extensive grounds of the protected structure have been substantially reduced already by the modern housing estate and the newly permitted development and the further addition of 1/5 storey would dominate and diminish the character and special interests.
- Section 13.5.1 of the Architectural Heritage Protection guidelines states that proposals for new development within the curtilage of a protected structure should be carefully scrutinised by the planning authority, as inappropriate development will be detrimental to the character of the structure.
- The reduction in light in our garden in summer at 1500, 1600 and 1700 would be further increased by the addition of a fifth storey which would have a large effect on our children who use the communal garden as their only open space.
- A fifth storey would drastically reduce light from early afternoon and effect habitable rooms of our properties. Due to permitted block A our west facing living room will be obsolete. Therefore all our windows would be affected by loss of light, sunlight and daylight.

Residents of Grosvenor Court (Carol McLaughlin)

- A visually dominant five storey apartment block in the setting of the grounds of Verville Retreat is incongruous and incompatible with the character of the protected structure and with the residential conservation objective. The increase in height is almost 25% and is not a minor modification.
- The Shieling site is not an appropriate precedent. It is not comparable in terms of scale, location or the resulting negative impact.
- Further loss of daylight. No relevant sunlight and daylight study has been undertaken of relevance to the fifth floor and its impact.
- There will be additional loss of privacy within our homes and back gardens. Overall noise and light pollution will intrude on and diminish reasonable use and enjoyment of homes.
- Petition attached.

Eamonn Ryan

- The high level special and economic strategy documents which are quoted failed to acknowledge the already high level of residential development.
- Public transport nearby is extremely overcrowded at peak times especially.
- The fifth floor would have an overbearing impact on my home.
- The fifth floor would be greater in height than the adjacent protected structure and thus automatically impacts negatively on the amenity and heritage value and would be incongruous and incompatible with the character of the protected structure and the Z2 zoning.
- No open space. This would result in significant use of balconies on all sides. That would be a gross invasion of privacy due to overlooking of rear gardens.
- The impact of the additional five units has to be considered in the context of an already generous 68 approved units. The achieved level of development is adequate in terms of density and consolidation of the site. Further units would breach a reasonable tolerance level and compromise the protected structure and environment.
- Lack of technical assessment of sunlight and daylight. Proposal will result in further loss of daylight as the additional floor will obstruct the skyline from my home.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. The issues raised in the appeal relate to the following:

- Impact on the protected structure.
- Impact on residential amenities.
- Parking.
- Other matters.

- 7.2. Regarding the **impact on the protected structure** I note that the development presently under construction will result in restoration of a building which has been vacant for decades. The permission for the restoration was allied to the grant of permission for a substantial amount of development within the curtilage of the site and including Block C.
- 7.3. I consider that the grounds of the appeal presented correctly emphasise the new policy context since the development under construction was envisaged. However, I am of the opinion that the appellant has underestimated other policy provisions including those which address the specific site context within the curtilage of a protected structure.
- 7.4. The government guidelines make it clear that proposals within architecturally sensitive areas, should successfully integrate into/enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks and the protection of key views. Notwithstanding the new guidance on building height and urban development, which has been adopted since the original application was lodged there remains an emphasis on the protection of buildings of architectural heritage. I agree with the observers' comments that the Architectural Heritage Protection guidance is still a highly relevant document and note that it is referenced in the Building Height Guidelines. The latter also requires site level analysis and an urban design report approach. The purpose of the listing of Verville House is to ensure that its special character is maintained. While it is acknowledged in the report of ARC Architectural Consultants that the permitted and proposed developments would result in very substantial changes to the setting of the building the further change in setting is described as 'minor' by comparison.
- 7.5. On the issue of architectural heritage a number of third parties have quoted extracts from the previously permitted development submissions made by the applicant in relation to the manner in which that development was designed to maintain building lines and not to impact the architectural importance of Verville. It is stated that these extracts show that the applicant was keenly aware of the importance of not exceeding the ridge height of the protected structure. The subject development is described as constituting a substantial change by any standards.

- 7.6. In considering these issues I revert in the first instance to the planning history and in particular the first party appeal against a detailed condition 5(b), which was attached by the planning authority and required that apartments be omitted at the northern end of Block C to ensure an 11m separation (increased from 4.2m). The Architect's Design Statement had noted that Block C would step down to 3-storeys with a setback penthouse in order to minimise potential impact to Verville. The first party submissions also included a number of images of planning precedents involving the insertion within the curtilage of protected structures of buildings of contemporary design. In her report the Inspector noted that the new build in those cases remains subordinate to the main elements of the protected structure. That was not considered to be the case with the development subject of ABP-302344 and the Inspector concluded that condition 5(b) was reasonable. The Board adopted her recommendation.
- 7.7. I consider that the current appeal resolves essentially around the same principle that is maintain the character of the protected structure and ensuring that the new development is subordinate.
- 7.8. The applicant has provided a number of images which address the changes proposed under this application compared with that permitted. I would alert the Board to an error in one of the images. Image 4 which shows the view of the proposed development from the south-west of the courtyard is not in keeping with the elevation drawings. It incorrectly shows the proposed penthouse level at a location further south and thereby significantly underestimates the dominance of the upper floor and its visibility.
- 7.9. Regarding the impact of the development on the setting of the protected structure as considered from the south-west my assessment is:
- I consider that the position and the height of the permitted development are sympathetic and not overly dominant. The main 3-storey facade relates well to the main façade of Verville. The setback level relates well to the roof level. The roof ridge of Verville is not exceeded.
 - The proposed upper level would constitute a further element of new development in proximity to the main façade of the building. In terms of its design and height the proposed development does not exhibit any of the

merits of the permitted development. The additional setback level would result in the upper floors being more dominant and the roof ridge of Verville would be significantly exceeded. The simple elegance of the permitted development and the manner in which it respects the main parameters of Verville would be lost. The new block would appear to be top-heavy and dominant.

7.10. Regarding the impact from Verville itself images 1 and 2 show the view of the permitted and the proposed developments. In my opinion the outward views from the protected structures would be more pleasing if they were terminated by the permitted building. The additional floor would constitute a further intrusion on view from the building, which would impact on the special character of the building.

7.11. Regarding the impact from the entry to the courtyard at the north-west, which is presented in image 2 lodged with the application:

- There would be an expansive view of the proposed development but it would not be directly viewed within the context of the protected structure.
- From this direction the primary consideration might be considered to be the design merits of the proposal rather than the impact on architectural heritage.
- I consider that the additional setback floor diminishes the aesthetic value of the permitted development.

In conclusion in relation to the impact of the development on the protected structure I consider that in the context the additional setback floor is inappropriate. Having regard to the permitted development there is no justification in terms of density / in order to comply with national policy. The proposed development therefore should not be permitted.

7.12. Regarding the **impact on the amenities of the residential properties** in the vicinity the issues which have been raised relate especially to increases in overshadowing and overbearing.

7.13. The matter of additional overshadowing impacts is considered in the A3 document Sunlight Access Impact Analysis, which was presented as part of the appeal. This report concludes that 'the development now proposed is so minor that in most cases there will be no material difference between the permitted and proposed

development in terms of impact due to overshadowing'. In a worst case scenario this analysis shows that the change would be less than or equal to 1% difference (a moderate effect) compared with the permitted development.

- 7.14. I note the particular points made by the observers in relation to the expectations for evening sunlight and other general points including that the permitted development is close to the BRE standards. The marginal increases in overshadowing would not be significant compared with any increases resulting from the permitted development. That conclusion can be drawn from the report which present scenarios for the existing (without any development), permitted and proposed developments. I do not consider that a refusal of permission or amendment of the scheme would be required in the interest of the protection of existing residential amenities.
- 7.15. I note in addition that it is stated that due to a general low level of open space within the development the additional units would increase use of balconies resulting in increased overlooking. The Board has previously determined that the development is acceptable in terms of residential amenities of the adjacent residential properties and regarding open space for future occupants. I am not convinced that the proposed additional 5 no. units in a development of this scale would result in significant additional pressure on the open space.
- 7.16. In relation to the concern that there would be an increase in the overbearing nature of the development with the additional floor I note as follows. First, the additional floor would be well-screened by the trees along the southern boundary. Secondly there is no change to the height of the western side of Block C and the remainder of the block is some distance from the rear of those houses. Regarding the residences to the east I am not convinced having regard to the effect of the permitted development and the proximity that the upper floor levels would be especially prominent in views.
- 7.17. In conclusion in relation to the impact on residential amenities compared with the permitted development, I consider that the evidence presented is that no significant change arises. In particular I consider that nothing arising in relation to effects on residential amenities would warrant a refusal of permission in this case.
- 7.18. Regarding the **traffic and parking** implications of the proposed development this is subject of an appeal submission report of NRB consulting engineers which considers

that the additional 5 no. residential apartments generate a negligible increase in local traffic based on an assessment using the TRICS database. The approved scheme proposed 77 car parking spaces, which was reduced by way of condition 3 of the decision of An Bord Pleanála. The stated reason was to promote alternative modes of transport and having regard to the proximity of public transport networks and to provide storage for apartments in the relevant area. In light of that condition and in accordance with best practice principles the applicant considered it appropriate to provide no additional dedicated car parking in this case for the 5 no. additional units. Notwithstanding the likely capacity issues in rail lines in the area I note that the site is close to the city and would be considered to be highly accessible by sustainable modes of travel. I consider that the proposed development is acceptable in terms of traffic and parking issues.

- 7.19. **Other issues** which have been raised relate primarily to matters which are not relevant for the Board to determine as they fall into the realm of enforcement.
- 7.20. A letter from the housing department of DCC in relation to Part V provisions relating to social and affordable houses notes the preferred option to acquire units on site. Discussions are ongoing. A standard condition on this matter would be appropriate if permission is granted.
- 7.21. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and distance to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

The site is within the curtilage of Verville a protected structure in relation to which it is an objective of the Dublin City Development Plan 2016-2022 to ensure protection of the special interest of protected structures and to conserve and enhance protected structures and their curtilage. In particular under policy CHC2 (d) it is required that development not cause harm to the curtilage and that the design, form, scale, proportions, siting and materials of new development should relate to and compliment the special character of the protected structure.

Having regard to the location of the set-back penthouse and the overall height of Block C and its detailed design, it is considered that the additional set-back floor would result in a development within the curtilage of Verville, which would be overly dominant in views from the courtyard and from the main house and when compared with the permitted development which is under construction, would constitute an unacceptable design solution. The proposed development would therefore detract from the setting of the protected structure and fail to enhance or protect its character and would, therefore, be contrary to the proper planning and sustainable development of the area.

Mairead Kenny

Senior Planning Inspector

11th March 2020